IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2488 OF 2005
ALONG WITH
CRIMINAL APPLICATION NO. 2489 OF 2005

Shri Bharat Dattu Mate ...Petitioner.

V/s

T.D.K. Enterprises ...Respondent.

Ms. Prachi Khandge for the petitioner.
Mr. D.P. Adsule for the respondent.

CORAM: V.M.KANADE,J.

DATE: 2nd May, 2005

P.C.:

1. Heard the learned counsel for the petitioner.

2. Petitioner is challenging the order passed by the Metropolitan Magistrate dismissing his application for discharge made on the ground that the second complaint filed by the complainant is not maintainable.

3. In the present case, complainant has filed a case under section 138 of the Negotiable Instruments Act. Thereafter, application was made for withdrawal of the complaint on the ground that there were some technical defects in the said complaint. This application was allowed and liberty was granted to the complaint to file a fresh complaint. Accordingly, fresh complaint has been filed.

4. It is submitted by the learned counsel appearing on behalf of the petitioner that the complaint which is withdrawn under section 257 of the Cr.P.C. would amount to acquittal of the accused and, therefore, by virtue of the provisions of section 300 of the Cr.P.C., he cannot be tried again for the same offence.

5. It is not possible to accept the submissions made by the learned counsel appearing for the petitioner. The complainant was permitted to withdraw the complaint before the proceedings were initiated against the accused and, thereafter, liberty was granted to him to file a fresh complaint. Therefore, it cannot be said that the accused was acquitted when the earlier complaint was allowed to be withdrawn. There is no bar in the Criminal Procedure Code for filing second complaint after the first is allowed to be withdrawn. The Trial Court has given cogent reasons while rejecting the application of the applicant. There is no reason to interfere with the said order. Criminal Application is rejected. The other questions which may be raised by the Petitioner are kept open and can be considered by the Magistrate during trial.

6. Criminal Applications are accordingly dismissed.

V.M. KANADE, J.